

June 2003

Update: Criminal Procedure Monograph 7— Probation Revocation (Revised Edition)

Note:

Pursuant to Supreme Court Order No. 1998-50 and No. 2001-19, effective May 1, 2003, the Court adopted new subchapter 3.900 of the Michigan Court Rules, deleted subchapter 5.900, and amended rules in subchapter 6.900, all with regard to proceedings involving juveniles. Every effort has been made to identify and update the information contained in this publication where the amendments have a substantive impact. Changes limited to alpha-numeric order and related ministerial revisions are reserved for the next comprehensive update of the publication.

7.2 Rules Applicable to Probation Revocation Proceedings

B. Proceedings Involving Juveniles

Please note that the proposed amendments to MCR 6.933 mentioned in the cross-reference (indicated with *) on page 4 were effective May 1, 2003.

7.24 Lack of Notice of Condition as a Defense to Revocation

Replace the language in the cross-reference (indicated with *) on page 22 with the following:

Effective May 1, 2003, MCR 6.933(B)(1)(b) expressly prohibits a court from revoking a juvenile's probation unless the juvenile was given notice as required by MCR 6.931(F)(2).

7.30 Revocation of “Juvenile Probation”

Replace the first paragraph of Section 7.30 on page 27 with the following paragraph:

A court may not revoke a juvenile’s probation unless the juvenile was informed at the original sentencing that conviction of a felony or misdemeanor punishable by more than one year’s imprisonment would result in mandatory probation revocation. MCR 6.933(B)(1)(b). If the court finds that a juvenile has violated “juvenile probation” by conviction of a felony or a misdemeanor punishable by more than one year’s imprisonment, *and* the juvenile was properly noticed at the original sentencing, the court *must* revoke the juvenile’s probation and order the juvenile committed to the Department of Corrections for a term of years not to exceed the penalty that could have been imposed for the offense that led to the probation. MCR 6.933(B)(1)(a). In imposing sentence, the court shall grant credit against the sentence as required by law. MCL 771.7(1) and MCR 6.933(B)(1)(a).

At the top of page 28, replace the first paragraph with the following two paragraphs:

Pursuant to Order No. 1998-50 and No. 2001-19, effective May 1, 2003, amendments to MCR 6.933 address a court’s sentencing options after mandatory probation revocation with regard to two specific offenses: manufacture, delivery, or possession with intent to deliver 650 grams (1000 grams beginning March 1, 2003) or more of a controlled substance and first-degree murder. MCR 6.933(C)(1)–(2). Consonant with the Supreme Court’s interpretation of MCL 771.7(1) in *People v Valentin*, 457 Mich 1, 13–14 (1998), subrule (C)(1) provides that a juvenile who is placed on probation and committed to state wardship for manufacture, delivery, or possession with intent to deliver 650 grams (1000 grams beginning March 1, 2003) or more of a controlled substance may be resentenced only to a term of years, not to a parolable or nonparolable life sentence, following mandatory probation revocation for committing a subsequent felony.

*It should also be noted that effective January 1, 1997, juveniles convicted of first-degree murder in “automatic waiver” proceedings must be committed to the Department of Corrections. See MCL 769.1(g). Thus, application of new MCR 6.933(C)(2) will be limited to juveniles whose offenses occurred prior to January 1, 1997.

Similarly, MCR 6.933(C)(2) addresses probation revocation and resentencing of a juvenile who was convicted of first-degree murder. If a juvenile convicted of first-degree murder violates probation by being convicted of a felony or misdemeanor punishable by more than one year’s imprisonment, subrule (C)(2) permits the court to resentence the juvenile only to a term of years and not to nonparolable life. The subrule expressly prohibits the court from imposing a nonparolable life sentence on the juvenile, but the rule is silent with regard to parolable life sentences. Any uncertainty suggested by (C)(2)’s express mention of nonparolable life and its silence regarding parolable life appears to be settled by the *Valentin* Court’s analysis of MCL 771.7(1). Because *Valentin* interpreted the language used in MCL 771.7(1) to prohibit parolable life sentences, and because MCL 771.7(1) is also applicable to probation revocation and resentencing of a juvenile convicted of first-degree murder, MCR 6.933(C)(2) must also prohibit the imposition of parolable life sentences.*

Replace the second paragraph on page 28 with the following paragraph:

If the court finds that the juvenile has violated “juvenile probation” by means other than being convicted of a felony or misdemeanor punishable by more than one year’s imprisonment, new MCR 6.933(B)(2) permits the court to choose whether to continue the juvenile’s probation and state wardship or to order the juvenile committed to the Department of Corrections. See also MCL 771.7(2). In addition to the juvenile’s continued probation or commitment to the Department of Corrections, the court may order any of the following:

